HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No.1582 of 2001
(Old No. 3358 of 1984).

Baldeo Singh S/o Ajayab Singh & another … Appellants

Versus

State … Respondent.

~~Approved for reporting.~~

Not approved for reporting.

Date of Decision 8th December, 2004.

Initial of Judge.

Court No. 2
Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No.1582 of 2001
(Old No. 3358 of 1984).

1. Baldeo Singh S/o Ajayab Singh,
   R/o Gajraula, P.S.Bazpur,
   District-Nainital.
2. Baldeo Singh S/o Karnail Singh,
   R/o Village-Kinaara, P.S.-Bazpur,
   District-Nainital. …Appellants

Versus

State …Respondent.

Smt.Pushpa Joshi, learned counsel for the appellants,
Sri Nandan Arya, learned A.G.A. assisted by Sri G.S.Sandhu, learned A.G.A.

Coram: **Hon'ble P.C. Verma,J.**
Hon'ble B.C.Kandpal,J.

(Delivered by Hon'ble B.C.Kandpal,J.)

This criminal appeal arises out against the judgment and order dated 28.11.1984 passed by Additional Sessions Judge (Special Judge), Nainital in Sessions Trial No. 121 of 1982, State versus Smt.Pritam Kaur and four others convicting and sentencing the accused/appellant Baldeo Singh S/o Ajayab Singh for life imprisonment under Section 302 of the I.P.C., four years rigorous imprisonment under Sec. 201 I.P.C., four years rigorous imprisonment under Sec.364 I.P.C. and six months rigorous imprisonment under Sec. 342 I.P.C. Accused /appellants Baldeo Singh S/o Karnail Singh and

Ajayab Singh S/o Phola Singh each were convicted and sentenced to imprisonment for life under Sec. 302 read with Sec. 34 of the I.P.C., four years rigorous imprisonment under Sec. 201 I.P.C., four years rigorous imprisonment under Sec.364 I.P.C. and six months rigorous imprisonment under Sec. 342 I.P.C.

2. At the outset it may be mentioned that the appeal was filed on behalf of all the three accused/appellants but during the pendency of the appeal appellant Ajayab Singh died and appeal on his behalf was dismissed as abated, vide the Court's order dated 09.03.2004.

3. Brief facts of the prosecution case are that on 18.4.1982, at about 7.30 p.m., Mohan Singh and his mother (both deceased) were sitting in the Sehan of their house and a lantern was burning nearby. Trilok Singh (P.W.1) and Jagdish (P.W.2) were also sitting there with them. At the same time accused Smt.Pritam Kaur came to that place and started abusing Mohan Singh and his mother. Mohan Singh (deceased) stopped her from abusing them with the result that heated words were exchanged between them. Just then accused Baldeo Singh S/o Ajayab Singh, Baldeo Singh S/o Karnail Singh, both armed with guns and Ajayab Singh and one other person both armed with lathis, arrived on the spot. They said *"roj-roj ke Jhagde ko aaj khatam kiye detey hain"*. At once accused Baldeo Singh S/o Ajayab Singh fired a shot from his gun which hit Mohan Singh on his chest and he fell on the cot on which he was sitting. The accused then carried Mohan Singh alongwith that cot to their house. Mother of Mohan Singh followed them and pleaded for

the return of the body of Mohan Singh to her. Both the witnesses, named above, also followed the accused to their house and they also tried to stop the accused. The accused threatened the witnesses that if they did not keep quiet, they would meet the same fate. At their house, the accused kept the body of Mohan Singh in a wooden trolley and they locked both the witnesses inside a room of their house and instructed accused Pritam Kaur not to open the door till they returned after disposing of the body. The accused also threw the mother of Mohan Singh in the trolley attaching it to the tractor drove away towards Gulzarpur. On the repeated request and assurance by the above named witnesses that they will not report the matter to anyone, next day i.e. 19.4.1982 at about 2.00 p.m. accused Smt.Pritam Kaur opened the door and they were set free. Witnesses Trilok Singh and Jagdish went to Bazpur and there Trilok Singh wrote a written report, Ext.Ka-1 and lodged it at the Police Station at 4.20 p.m.

4. S.I. Abdul Gani (P.W.5), the then Head Moharrir of P.S.-Bazpur, on the basis of the written report wrote the F.I.R. Ext.Ka-13 and entered the case in the general diary, extract of which was marked as Ext.Ka-14.

5. The investigation of the case was entrusted to S.I. Anang Pal Singh Verma (P.W.9). He inspected the place of occurrence on 19.4.1982 and prepared its site plan, Ext.Ka-26. The Investigating Officer took the lantern Ext.-16 from the place of occurrence in his custody and prepared its memo Ext.Ka-2. On 20.4.1982 he arrested Smt.Pritam Kaur and recorded her statement.

6. On 26.4.1982 accused Baldeo Singh S/o Ajayab Singh and Baldeo Singh S/o Karnail Singh were arrested and their statements were recorded separately. Each of them stated that he can show the place where he had burnt the dead bodies and the place where he had buried the pieces of bones and also the place where they had concealed the articles which were used in the commission of the crime. The Investigating Officer took some burnt earth from that place and prepared its memo Ext.Ka-4 in the presence of witnesses Nirmal Singh, Ranjit kaur, Jagdish Singh and Uttam Singh. He also took into custody some pieces of bones and burnt pieces of tyre, Ext.-17 and prepared its memo Ext.Ka-5. Some burnt coal, small pieces of bones and a large size of 'Kara', Ext.9 and two small size 'Karas' Ext.10 were also taken into possession and sealed and prepared their memo Ext.Ka-6 by the Investigating Officer.

7. On 27.4.1982 statement of accused Iqbal Singh was recorded. On 4.5.1982 accused Ajayab Singh surrendered before the Court and his statement was taken by the Investigator in the lock-up. On 09.5.1982 on his pointing out one gun Ext-1 with an empty cartridge Ext-8 and two live cartridges Ext. 6 & 7 were recovered by the Investigating Officer. Accused Ajayab stated that this was the gun which was used by his son Baldeo Singh for killing Mohan Singh. These articles were sealed and memo Ext.Ka-3 was prepared. After completing all the aforesaid formalities, the Investigating Officer submitted chargesheet Ext.Ka-33 against all the five accused on 2.6.1982.

8. After completing the investigation, the Investigating Officer also submitted chargesheet under Sec. 25 Arms Act against accused Baldeo Singh S/o Karnail Singh Ext.Ka-21 and against accused Ajayab Singh Ext.Ka-18 separately.

9. After the charge sheet was submitted, the appellants were committed to the Court of Sessions and the learned Additional Sessions Judge, Nainital on 19.07.1983 framed the charge against accused Baldeo Singh S/o Ajayab Singh under Sections 148, 302, 201& 364 I.P.C. On the same date charge under Sessions 148,147, 302/149, 364 & 201 I.P.C. was framed against accused Smt. Pritam Kaur, Baldeo Singh S/o Karnail Singh and Ajayab Singh. Charge against accused Iqbal Singh was also framed under Sec. 201 I.P.C. on the same date. On 25.8.1983 the learned Additional Sessions Judge also framed the charge under Sec. 342 I.P.C. against the accused Smt.Pritam Kaur, Ajayab Singh, Baldeo Singh S/o Karnail Singh and Baldeo Singh S/o Ajayab Singh. All the accused denied of the charges levelled against them and claimed their trial.

10. The prosecution in order to bring the guilt of the accused to home produced P.W.1 Trilok Singh an eye witness and the ascribe of the written report Ext. Ka-1, P.W.2 Jagdish Singh another eye witness, P.W.3 Trilochan Singh a witness of the recovery of the gun and cartridges at the pointing out of accused Ajayab Singh, P.W.4 Ranjit Kaur a witness of the recovery, P.W.5 S.I. Abdul Gain scribe of the F.I.R. Ext. Ka-13, P.W.6 S.I. Yad Ram Singh the Investigator of the case under Sec. 25 Arms Act against accused Baldeo Singh S/o Karnial Singh, P.W.7 S.I.- M.P.Juyal the Investigator of the case

against accused Ajayab Singh under Sec. 25 Arms Act, P.W. 8 Head Moharrir Gopal Dutt scribe of the F.I.R. dated 27.04.1982 Ext. Ka-22 against accused Baldeo Singh S/o Karnail Singh and P.W.9 S.I. Anangpal Singh Verma the Investigator in the case under appeal.

11. After the evidence of the prosecution was over, the statements of the accused persons were recorded under Sec. 313 of the Criminal Procedure Code. The accused persons did not produce any evidence in their defence.

12. The learned trial court after having perused the evidence on record and hearing the learned counsel for the parties convicted only accused Baldeo Singh S/o Ajayab Singh under Secs. 302, 201, 364 & 342 I.P.C., and Baldeo Singh S/o Karnail Singh and Ajayab Singh each under Secs. 302/34, 201, 364 & 342 I.P.C. and sentenced them as above, vide the judgment and order dated 28.11.1984. Feeling aggrieved by the aforesaid impugned judgment and order, the convicted accused/appellants have come up in this appeal.

13. We have heard the learned counsel for the appellants as well as learned A.G.A. at length and perused the record.

14. Learned counsel for the appellant has first of all argued that there is an inordinate delay in lodging the First Information Report at the police station. He has submitted that the incident is alleged to have been taken place at 7:30 p.m. on 18.04.1982. The distance of the police station from the place of occurrence is about 8 km and the First Information Report was lodged at

police station Bazpur on 19.04.1982 at 4:20 p.m. by Trilok Singh.

15. The evidence of Trilok Singh (P.W.1) shows that the accused/appellants appeared at the spot i.e. at the house of the deceased – Mohan Singh at about 7:30 p.m. on 18.04.1982. The accused/appellant Baldeo Singh S/o Sri Ajayab Singh fired a shot at Mohan Singh which hit him and on account of this fire Mohan Singh fell down. He has also stated that after this incident, the accused/appellants took Mohan Singh and put him in a Dunlop trolley. When Mahendra Kaur – mother of the deceased Mohan Singh retarded, then the accused/appellants also took her on the same trolley and took both of them i.e. the deceased Mohan Singh and his mother Mahender Kaur a way towards the jungle.

16. The explanation which has been extended by this witness for the delay in lodging the First Information Report is that he and one another eyewitness i.e. Jagdish Singh (P.W.2) who was also present at the seen of the occurrence were confined in a room by the accused persons and they remained confined inside the room through out the night. It has been deposed by Trilok Singh (P.W.1) that he made several requests to Pritam Kaur wife of the accused Ajayab Singh for their release but she did not release them and only after making several requests by Pritam Kaur wife of the accused Ajayab released them on the next day i.e. on 19.04.1982 at about 2:00 p.m. and after the release from that room, this witness along with another eyewitness Jagdish Singh (P.W.2) went to police station Bazpur

and scribed the report. Thereafter, the report could be lodged at the police station Bazpur at 4:20 p.m. on 19.04.1982.

17. The evidence of Trilok Singh (P.W.1) firstly, does not appear to be trustworthy, as he did not raise any hue and cry for the release while he was confined inside the room. Secondly, it does not appear to be reliable as to why the accused persons will release the eyewitnesses when these eyewitnesses had seen the entire incident. The reason for their confining inside the room by the accused appellant also does not appear to be convincing. These witnesses have categorically stated in their deposition that the accused/appellants did not attach the eyewitnesses i.e. Trilok Singh (P.W.1) and Jagdish Singh (P.W.2). These witnesses have also stated that none of the accused/appellants tried to apprehend them.

18. The structure of the room in which these witnesses were confined, as has been stated by these witnesses show that, in case, if these witnesses would have made some efforts for their release then they could have easily made their escape good. Trilok Singh (P.W.1) has stated that the room in which they were confined had a wooden window. He has stated that they remained inside the room through out the night and could not sleep. They have also stayed that they did not try to make their escape good and only when Pritam Kaur wife of the accused Ajayab Singh opened the door of the room only then they left the place. Therefore, the explanation given by these witnesses with regard to the delay in lodging the report does not appear to be trustworthy.

19. The next important point in this case, which is to be decided, is whether the eyewitnesses produced by the prosecution are trustworthy or not. In this context, it is noteworthy to mention here that both the eyewitnesses' i.e. Trilok Singh (P.W.1) and Jagdish Prasad are the chance witness.

20. Trilok Singh (P.W.1) in his deposition has stated that he is a resident of village Meerkhas, P.S.-Swar, Distt. Rampur which is at a distance of about 30 to 35 km from the village Gajraula i.e. place of the occurrence. The reason for the presence of this witness Trilok Singh (P.W.1) at the house of the deceased Mohan Singh as has been stated by him was that he wanted to borrow the tube-well engine from the deceased Mohan Singh in order to irrigate his field.

21. It is pertinent to mention here that only in order to borrow the tube-well engine, why a person will travel for a distance of about 30 to 35 km. It is also pertinent to mention here that the prosecution has not cared to produce any eyewitness from the vicinity.

22. Again it would be relevant to mention that Jagdish Singh (P.W.2) who is another eyewitness is a R/o village Bachukhera P.S. Swar District Rampur. Therefore, the presence of this witness is also by chance. This witness has deposed in his cross-examination that he accompanied Trilok Singh (P.W.1) for borrowing the tube well engine from the house of the deceased Mohan Singh. Therefore, the reason with regard to their presence at the house of the deceased-Mohan Singh on

the date and time of the incident does not appear to be probable and satisfactory.

23. About the manner of the incident both the witnesses have deposed in their deposition before the court and that also does not inspire confidence. These witnesses have stated that when accused/appellants took Mohan Singh and Mahendra Kaur with them on a wooden trolley then these witnesses followed the accused persons and victims; thereafter they went to the house of the accused/appellant Ajayab Singh. These witnesses have stated that at the house of Ajayab Singh one of the accused connected the trolley with a tractor and took both the victims to the side of Gulzarpur.

24. It is important to mention here that neither the dead body nor any belonging to the alleged deceased could be subsequently recovered. Therefore, it is not known as to in what manner the incident of murder of Mohan Singh and Mahendra Kaur took place.

25. The prosecution has not adduced any direct evidence which may connect the accused/appellants with the actual commission of murder of Mohan Singh and his mother Mahendra Kaur. It is very difficult under these circumstances to assign the specific role to any of the accused/appellants. It also does not appear to be believable that why the accused/appellants will spare these two eyewitnesses, especially when these two eyewitnesses have seen the entire occurrence. It is the common prudence that when this type of gruesome murder of anyone is committed then the assailant shall try not

to leave any evidence either at the spot or at any subsequent place which may connect them to the crime. The confinement of these two eyewitnesses in a room by the accused/appellants and then their release, subsequently by Pritam Kaur wife of the accused/appellant Ajayab Singh appears to be a cock and bull story. Both these eyewitnesses have been planted by the prosecution in order to show the manner of the incident but their testimony as we have already observed does not appear to be trustworthy.

26. It is again important to mention here that Trilok Singh (P.W.1) had never visited the village Gajraula where the incident has been taken place as he has stated in his cross examination specifically that he cannot tell as to which side of the village, the house of accused/appellant Ajayab Singh is situated as he has never gone in the village. This witness has also stated that he cannot tell as to the road leading to Gulzarpur is on which side for the house of Ajayab Singh-appellant. The specific case, which has been stated by this witness in his deposition is that the accused/appellants took Mohan and his mother Mahendra Kaur on wooden trolley towards Gulzarpur.

27. Jagdish Singh (P.W.2) has also deposed in his cross-examination that he had never visited the village Gajraula from inside. Village Gajraula is the place where the incident had taken place. This witness has stated that he cannot tell as to what is the population of village Gajraula. Therefore, the presence of this witness at the spot is absolutely by chance and the testimony of the chance witness is certainly to be scrutinized very closely and in case, if there are major

contradictions and embellishments in the testimony of the chance witnesses than the ocular version of the chance witnesses cannot be relied upon.

28. It would also be pertinent to mention here that as per the statement of Trilok Singh (P.W.1.), the house of Labh Singh is situated at a distance of about 1 furlong from the house of the deceased Mohan Singh. But none of the family members of Labh Singh has been shown as the eyewitness. It has been stated by the eyewitnesses that there was a sound of fire. It is worthy to mention here that the incident is alleged to have taken place at about 7:30 p.m. then naturally at that time sound of fire must have traveled for a long distance. But none of the eyewitnesses from the locality could come at the spot. The manner in which the incident has taken place, certainly could have taken sufficient time. According to the witnesses first of all accused/appellants appeared at the spot and there was some hot altercation between the deceased Mohan Singh and Pritam Kaur wife of the accused-Ajayab Singh. Thereafter, the accused/appellants appeared at the scene of occurrence and the appellant Baldeo S/o Ajayab Singh who was having a gun with him fired at Mohan Singh which hit at his chest and fell down. Thereafter, the accused/appellants are alleged to have taken Mohan Singh and Mahendra Kaur with them on a wooden trolley and took them to the house of Ajayab Singh from there and from there the accused/appellants took away Mohan Singh and his mother Mahendra Kaur towards Gulzarpur. It is natural that Mahendra Kaur who is the mother of the deceased Mohan Singh, must have raised hue and cry loudly because her son was shot by the accused/appellant. But surprisingly to note that

none of the witnesses from the vicinity appeared at the place of the occurrence which makes the prosecution case doubtful.

29. Trilok Singh (P.W.1) has stated that at a distance of about 100 to 150 paces from the house of the deceased Mohan Singh, there is a Gurdwara. He has also stated that there are certain houses situated at a distance of 11/2 to 2 furlong from the house of the deceased Mohan Singh. Therefore, if the houses of the other persons are situated in the locality and none of the person is coming forward to witness the incident and the prosecution could produce only two chance witnesses in order to establish its case, the same makes the prosecution story completely doubtful.

30. Jagdish Singh (P.W.2) has also stated that the house of Labh Singh is situated at a distance of 1 furlong from the house of the deceased Mohan Singh. Therefore, non-production of any independent witness by the prosecution brings the case within the ambit of doubt.

31. Next important question is with regard to the recovery of gun allegedly used in the commission of crime from the house of the appellant Ajayab Singh.

32. Again the prosecution has produced Trilochan Singh (P.W.3) who is also a chance witness as he has stated that his house is at a distance of about 22 kms from the place of occurrence. According to this witness, he was going to the house of Labh Singh and on the way police party met him and took him to the house of Ajayab Singh.

33. As per the prosecution case Baldeo Singh one of the appellant after committing the murder of Mohan Singh handed over the gun to his father Ajayab Singh for keeping the same in the house and this gun was recovered by the police from the house of Ajayab Singh. Trilochan Singh (P.W.3) is the witness of this recovery. The testimony of this witness does not appear to be trustworthy as he is neither the resident of the place of occurrence nor is an independent witness. He is firstly, a chance witness and secondly, real brother of the eyewitness Jagdish Singh (P.W.2) who is the brother-in-law (Behnoi) of Nirmal Singh, wife of Nirmal Singh is the real sister of the deceased Mohan Singh. This witness has stated that the house of Labh Singh is situated at distance of about 1 km from the house of the accused Ajayab Singh and there are certain other houses adjacent to the house of Labh Singh in the village Gajraula but none of the witnesses from the locality could be obtained by the police. Therefore, the recovery of the gun under these circumstances also appears to be doubtful.

34. Again the evidence pertaining to the recovery of turban and chappal belonging to the deceased Mohan Singh does not appear to be trustworthy. Jagdish Singh (P.W.2) in his deposition has stated that on the next day of lodging the report, the police called him at police station and thereafter, the police took him to the house of Ajayab Singh at about 11:00 a.m. Hence, on the basis of the deposition of this witness, he along with police went to the house of the accused /appellant Ajayab Singh on 20.04.1982 at about 11 a.m. This witness has stated that none was found in the house of Ajayab Singh but the police

could trace out turban and the chappal in the presence of Trilok Singh (P.W.1), Sub-inspector and police constable and both the accused/appellants Baldeo Singh who were taken by the police with them from the police station. This witness has stated that the police stayed at the house of Baldeo Singh for about 1 1/2 to 2 hours and thereafter the police took the recovered turban, chappals and both the accused Baldeo to the police station. This witness has stated that thereafter, the sub-inspector put both the Baldeo accused/appellants behind the bar.

35. It is, therefore , quite clear that according to the statement of Jagdish Singh (P.W. 2) recovery of the turban and chapel belonging to the deceased Mohan Singh was made by the police in his presence as well as two accused/appellants Baldeo Singh and another eyewitness Trilok Singh (P.W.1) on 20.04.1982. But the statement of this witness finds complete contradictions with the deposition of Ranjit Kaur who has deposed in her cross-examination before the court that she along with her husband Nirmal Singh reached the village on 21/22.04.1982, thereafter, she went to the police station on 26.04.1982 along with her husband Nirmal Singh, Jagdish Singh (P.W.2) and Uttam Singh. She has stated that when they reached at police station then both the accused/appellants Baldeo Singh were present in the custody of the police and thereafter the police took both the accused/appellants Baldeo in a jeep to the house of Ajayab Singh. She has further stated that the turban and chappal belonging to the deceased Mohan Singh as well as Mahendra Kaur were recovered and the police prepared the recovery memo in this regard. Anang Pal Singh Verma (P.W. 9) - Investigating Officer has also stated that the recovery of

turban and chappal belonging to the deceased Mohan Singh were recovered on 26.04.1982. Therefore, there is a material contradiction between the statements of the witnesses on this count and it is not clear as to whether the recovery of the turban and chappal belonging to the deceased was made on 20.04.1982 or on 26.04.1982. It is thus quite clear that the recovery of the turban and chappal belonging to the deceased Mohan Singh appears to be planted by the Investigating Agency and no reliance can be attached to this type of the recovery.

36. It is also important to mention there that the police after registering the case with regard to the occurrence on 19.04.1982 at 4:20 p.m. did not visit the house of the appellant. It has come in the deposition of Trilok Singh (P.W.1) that the Investigating Officer visited the house of the deceased Mohan Singh after the case was registered and took a lantern in his possession. The Investigating Officer thereafter prepared the recovery memo with regard to this lantern. This witness has also stated that his statement under section 161 Cr.P.C. was recorded at the house of the deceased Mohan Singh by the Investigating Officer. Likewise Jagdish Singh (P.W. 2) has also stated that the Investigating Officer also recorded the statement in the house of the deceased Mohan Singh as the Investigating Officer visited the house of the deceased at 7:30 to 8:00 p.m. on 19.04.1982 and took the lantern in his possession for which the recovery memo was prepared. Jagdish Singh (P.W.2) has stated further that the Investigating Officer thereafter returned to the police station. It is thus quite clear that the Investigating Officer did not care to visit the house of Ajayab Singh or any of the accused/appellants on the date of lodging the report. It is

evident from the record that the house of Ajayab Singh is at a distance of 100 to 150 paces from the house of the deceased Mohan Singh.

37. It is surprising to note that the Investigating Officer even after having the knowledge with regard to assailants of gruesome murders did not make any effort to visit the house of the accused/appellant Ajayab Singh immediately on 19.04.1982. This circumstance clearly indicates that either the Investigating Officer did not have any knowledge with regard to the actual assailants up to the evening of 19.04.1982 or the witnesses produced by the prosecution are telling lie in this regard. It does not appear to be reasonable that the Investigating Officer even after coming to know the name and the addresses of the real assailants will not make any effort to trace out the actual assailants especially, when the house of the accused in this case are not far away from the house of the deceased Mohan Singh.

38. One another important aspect in this case is that the Investigating Officer did not find any blood stain at the place where the deceased Mohan Singh was shot by the accused/appellants Baldeo Singh. This is the prosecution case that Mohan Singh after receiving the gun shot injury fell down. It is not clear whether Mohan Singh fell down on a cot or on the earth. The prosecution has tried to develop the case that the deceased Mohan Singh after receiving gun shot injury fell down on the cot and the accused/appellants put the deceased Mohan Singh on the wooden trolley along with the cot. It is also again not clear when the accused/appellants reached the house of

Ajayab Singh whether the cot was left over there or the deceased Mohan Singh was taken to an unknown place along with cot itself. There is no recovery of the cot which may indicate that the blood stain was actually found over there or not. The Investigating Agency also tried to collect the bones of the deceased, as it is the case of the prosecution that the assailants after murdering Mohan Singh and his mother Mahendra Kaur burnt them in a jungle. But there is no evidence which may connect that the bones recovered from the jungle by the Investigating Agency were actually belonging to the deceased or not.

39. The report of the chemical examiner shows that no opinion could be given with regard to the bones sent to the laboratory. Therefore, the prosecution has also failed in establishing this factor that the bones which are allegedly recovered on the pointing out of the accused/appellants in fact connect the same with the deceased persons.

40. The prosecution has tried to produce the evidence in order to prove that there is an evidence of last seen of the deceased in the company of the accused as well as the case is of direct evidence. But we are of the definite view that the evidence with regard to the last seen of the deceased in the company of the accused/appellants as well as the evidence of the direct nature pertaining to the fact of the murder of the deceased Mohan Singh and Mahendra Kaur is not reliable at all. The other evidence pertaining to the circumstances of the case are also shaky in view of the major contradictions, embellishments and omissions in the statement of the material

witnesses. We are, therefore, of the view that the prosecution has utterly failed in establishing the guilt of the accused/appellant beyond reasonable doubt.

41. For the reasons stated above we are of the view that the impugned judgment and order passed by the Additional Sessions Judge, Nainital is liable to be set aside.

42. We are thus of the conclusion that the present appeal is liable to be allowed. The conviction and sentence passed thereon deserves to be set aside.

43. The appeal is accordingly allowed. The conviction and sentence imposed against the accused/appellants vide impugned judgment and order passed by the trial court is hereby set aside.

(B.C. Kandpal, J) **(P.C. Verma, J.)**

December 08, 2004
ASWAL